

MICHELLE B. HEVERLY, Bar No. 178660
TODD K. BOYER, Bar No. 203132
LITTLER MENDELSON
A Professional Corporation
50 West San Fernando Street
15th Floor
San Jose, CA 95113.2303
Telephone: 408.998.4150

Attorneys for Defendant
LOCKHEED MARTIN CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EMILIO COLLADO,

Plaintiff,

v.

LOCKHEED MARTIN, and DOES 1
THROUGH 20, inclusive,

Defendants.

Case No. C-07 05190 JF

**DEFENDANT LOCKHEED MARTIN
CORPORATION'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Pursuant to Rule 8(b) through (f) of the Federal Rules of Civil Procedure, Defendant LOCKHEED MARTIN CORPORATION (LMC), erroneously sued herein as Lockheed Martin, by and through its attorneys of record, hereby answers the First Amended Complaint filed by Plaintiff Emilio Collado as follows:

1. Answering Paragraph 1 of the First Amended Complaint, Defendant LMC is without sufficient information to form a belief as to the truth or falsity of said Paragraph, and on that basis denies each and every allegation in said Paragraph.

2. Answering Paragraph 2 of the First Amended Complaint, assuming for purposes of this Answer that Defendant refers to Lockheed Martin Corporation, Defendant LMC admits that it operates facility in Sunnyvale, California.

3. Answering Paragraph 3 of the First Amended Complaint, Defendant LMC admits that it employed Plaintiff from April 2001 to January 2006. Except as expressly admitted

ANSWER TO FIRST AMENDED
COMPLAINT (C-07 05190 JF)

herein, Defendant denies each and every other remaining allegation in said Paragraph.

4. Answering Paragraph 4 of the First Amended Complaint, Defendant LMC admits it is a Corporation with a facility in Santa Clara County and is licensed to do business in California. Except as expressly admitted herein, Defendant denies each and every other remaining allegation in said Paragraph.

5. Answering Paragraph 5 of the First Amended Complaint, Defendant LMC is without sufficient information to form a belief as to the truth or falsity of Plaintiff's allegations regarding his own information, belief or ignorance, and on that basis denies each and every allegation in said Paragraph.

6. Answering Paragraph 6 of the First Amended Complaint, Defendant LMC is without sufficient information to form a belief as to the truth or falsity of Plaintiff's allegations regarding his own information, belief or ignorance, and on that basis denies each and every allegation in said Paragraph.

7. Answering Paragraph 7 of the First Amended Complaint, Defendant LMC admits that venue is proper in the San Jose Division of the United States District Court for the Northern District of California because it does business in Santa Clara County, but denies that engaged in any unlawful business practices. Except as expressly admitted herein, Defendant denies each and every other remaining allegation in said Paragraph.

8. Answering Paragraph 8 of the First Amended Complaint, Defendant LMC admits that this Court has jurisdiction over this case on the grounds of diversity. Except as expressly admitted herein, Defendant denies each and every other remaining allegation in said Paragraph.

FIRST CAUSE OF ACTION

(Violation of California Government Code §§ 12940 through 12997 (Discrimination Based on Disability))

9. Answering Paragraph 9 of the First Amended Complaint, which incorporates by reference Paragraphs 1-8, Defendant LMC incorporates herein its answer to Paragraphs 1-8 as set forth above.

10. Answering Paragraph 10 of the First Amended Complaint, Defendant LMC

ANSWER TO FIRST AMENDED
COMPLAINT (NO. C-07 05190 JF)

1 admits that it employed Plaintiff from April 2001 to January 2006. Except as expressly admitted
2 herein, Defendant LMC denies each and every remaining allegation in said Paragraph.

3 11. Answering Paragraph 11 of the First Amended Complaint, Defendant LMC
4 admits that it hired Plaintiff. Except as expressly admitted herein, Defendant LMC denies each and
5 every remaining allegation in said Paragraph.

6 12. Answering Paragraph 12 of the First Amended Complaint, Defendant LMC
7 denies each and every allegation in said Paragraph.

8 13. Answering Paragraph 13 of the First Amended Complaint, Defendant LMC
9 denies each and every such allegation in said Paragraph.

10 14. Answering Paragraph 14 of the First Amended Complaint, to the extent
11 Paragraph 14 contains legal argument, Defendant LMC is not required to answer. To the extent an
12 answer is required, Defendant LMC admits that Plaintiff was placed on a Performance Improvement
13 Plan, suspended and thereafter terminated. Except as expressly admitted herein, Defendant LMC
14 denies each and every remaining allegation in said Paragraph.

15 15. Answering Paragraph 15 of the First Amended Complaint, to the extent
16 Paragraph 15 contains legal argument, Defendant LMC is not required to answer. To the extent an
17 answer is required, Defendant LMC denies each and every allegation in said Paragraph.

18 16. Answering Paragraph 16 of the First Amended Complaint, to the extent
19 Paragraph 16 contains legal argument, Defendant LMC is not required to answer. To the extent an
20 answer is required, Defendant LMC denies each and every allegation in said Paragraph.

21 17. Answering Paragraph 17 of the First Amended Complaint, to the extent
22 Paragraph 17 contains legal argument, Defendant LMC is not required to answer. To the extent an
23 answer is required, Defendant LMC denies each and every allegation in said Paragraph...

24 18. Answering Paragraph 18 of the First Amended Complaint, to the extent
25 Paragraph 18 contains legal argument, Defendant LMC is not required to answer. To the extent an
26 answer is required, Defendant LMC denies each and every allegation in said Paragraph..

27 19. Answering Paragraph 19 of the First Amended Complaint, to the extent
28 Paragraph 19 contains legal argument, Defendant LMC is not required to answer. To the extent an

1 answer is required, Defendant LMC denies each and every allegation in said Paragraph.

2 20. Answering Paragraph 20 of the First Amended Complaint, Defendant LMC is
3 aware that Plaintiff filed a charge of discrimination with the DFEH. Except as expressly admitted
4 herein, denies each and every remaining allegation in said Paragraph.

5 21. Answering Paragraph 21 of the First Amended Complaint, to the extent
6 Paragraph 21 contains legal argument, Defendant LMC is not required to answer. To the extent an
7 answer is required, Defendant LMC denies each and every allegation in said Paragraph.

8 **SECOND CAUSE OF ACTION**

9 **(Wrongful Termination)**

10 22. Answering Paragraph 22 of the First Amended Complaint, which incorporates
11 by reference Paragraphs 1-21, Defendant LMC incorporates herein its answer to Paragraphs 1-21 as
12 set forth above.

13 23. Answering Paragraph 23 of the First Amended Complaint, to the extent
14 Paragraph 23 contains legal argument, Defendant LMC is not required to answer. To the extent an
15 answer is required, Defendant LMC admits that Plaintiff's employment was terminated in January
16 2006, and except as expressly admitted herein, denies each and every remaining allegation in said
17 Paragraph.

18 24. Answering Paragraph 24 of the First Amended Complaint, Defendant LMC
19 denies each and every allegations in said Paragraph.

20 25. Answering Paragraph 25 of the First Amended Complaint, Defendant LMC
21 denies each and every allegation in said Paragraph.

22 26. Answering Paragraph 26 of the First Amended Complaint, Defendant LMC is
23 without sufficient information to form a belief as to the truth or falsity of said Paragraph, and on that
24 basis denies each and every allegation in said Paragraph.

25 27. Answering Paragraph 27 of the First Amended Complaint, to the extent
26 Paragraph 27 contains legal argument, Defendant LMC is not required to answer. To the extent an
27 answer is required, Defendant LMC denies each and every allegation in said Paragraph.

THIRD CAUSE OF ACTION

(Breach of Contract)

28. Answering Paragraph 2 of the First Amended Complaint, which incorporates by reference Paragraphs 1-27, Defendant LMC incorporates herein its answer to Paragraphs 1-27 as set forth above.

29. Answering Paragraph 29 of the First Amended Complaint, Defendant LMC admits that it hired Plaintiff in 2001. Except as expressly admitted herein, Defendant LMC denies each and every remaining allegation in said Paragraph.

30. Answering Paragraph 30 of the First Amended Complaint, Defendant LMC admits that Plaintiff was employed by LMC for approximately four years. Except as expressly admitted herein, Defendant denies each and every remaining allegation in said Paragraph.

31. Answering Paragraph 31 of the First Amended Complaint, Defendant LMC denies each and every allegation in said Paragraph.

32. Answering Paragraph 32 of the First Amended Complaint, Defendant LMC admits that as a California employee, Plaintiff's employment was contractual and that the terms of the employment contract were evidenced by Defendant LMC's policies and procedures, including, but not limited to, its policy of at will employment. Except as expressly admitted herein, Defendant LMC denies each and every remaining allegation in said Paragraph.

33. Answering Paragraph 33 of the First Amended Complaint, Defendant LMC denies each and every allegation in said Paragraph.

34. Answering Paragraph 34 of the First Amended Complaint, Defendant LMC admits that Plaintiff's employment was terminated in 2006. Except as expressly admitted herein, Defendant LMC denies each and every remaining allegation in said Paragraph.

35. Answering Paragraph 35 of the First Amended Complaint, Defendant LMC denies each and every allegation in said Paragraph.

36. Answering Paragraph 36 of the First Amended Complaint, Defendant LMC is without sufficient information to form a belief as to the truth or falsity of said Paragraph, and on that basis denies each and every allegation in said Paragraph.

37. Answering Paragraph 37 of the First Amended Complaint, Defendant LMC denies each and every allegation in said Paragraph.

38. Answering Paragraph 38 of the First Amended Complaint, Defendant LMC denies each and every allegation in said Paragraph.

39. Answering Paragraph 39 of the First Amended Complaint, Defendant LMC is without sufficient information to form a belief as to the truth or falsity of said Paragraph, and on that basis denies each and every allegation in said Paragraph.

FOURTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

40. Answering Paragraph 40 of the First Amended Complaint, which incorporates by reference Paragraphs 1-39, Defendant LMC incorporates herein its answer to Paragraphs 1-39 as set forth above.

41. Answering Paragraph 41 of the First Amended Complaint, Defendant LMC denies each and every allegation in said Paragraph.

42. Answering Paragraph 42 of the First Amended Complaint, Defendant LMC denies each and every allegation in said Paragraph.

43. Answering Paragraph 43 of the First Amended Complaint, Defendant LMC admits that Plaintiff's employment was terminated on or about January 12, 2006. Except as expressly admitted herein, Defendant LMC denies each and every remaining allegation in said Paragraph.

44. Answering Paragraph 44 of the First Amended Complaint, to the extent Paragraph 44 contains legal argument, Defendant LMC is not required to answer. To the extent an answer is required, Defendant LMC denies each and every allegation in said Paragraph.

45. Answering Paragraph 45 of the First Amended Complaint, Defendant LMC is without sufficient information to form a belief as to the truth or falsity of said Paragraph, and on that basis denies each and every allegation in said Paragraph.

46. Answering Paragraph 46 of the First Amended Complaint, Defendant LMC is without sufficient information to form a belief as to the truth or falsity of said Paragraph, and on that

1 basis denies each and every allegation in said Paragraph.

2 47. Answering Paragraph 47 of the First Amended Complaint, to the extent
3 Paragraph 47 contains legal argument, Defendant LMC is not required to answer. To the extent an
4 answer is required, Defendant LMC denies each and every allegation in said Paragraph..

5 48. Answering Paragraph 48 of the First Amended Complaint, Paragraph 48
6 contains legal argument not requiring an answer and to the extent an answer is required, Defendant
7 denies each and every allegation in said Paragraph.

8 **AFFIRMATIVE DEFENSES**

9 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND
10 EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

11 That Plaintiff's First Amended Complaint fails to allege facts sufficient to constitute
12 any cause of action or to set forth a claim upon which relief can be granted.

13 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND
14 EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

15 That Plaintiff's claims are barred by the applicable statutes of limitations, including
16 California Code of Civil Procedure sections 335, *et seq.*, California Government Code sections
17 12960 and 12965(b), and the doctrine of laches.

18 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND
19 EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

20 That Plaintiff is barred in equity from recovering on his Complaint, or on any claim
21 contained therein, under the doctrine of unclean hands.

22 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND
23 EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

24 That Plaintiff is estopped by reason of his conduct, acts, or omissions from recovering
25 against Defendant on any purported claims for relief contained in the Complaint.

26 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND
27 EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

28 That all damages Plaintiff has suffered are wholly or in part the result of his own

1 actions, or the actions of other parties, not the answering Defendant.

2 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND
3 EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

4 That Plaintiff could have, through diligence, found other employment and taken other
5 action which would have mitigated his damages, and he had an affirmative duty to do so, which was
6 breached by her failure to find other employment and take other action upon the cessation of his
7 employment with Defendant.

8 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND
9 EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

10 That to the extent during the course of this litigation Defendant acquires any evidence
11 of wrongdoing by Plaintiff and the wrongdoing would have materially affected the terms and
12 conditions of Plaintiff's employment or would have resulted in Plaintiff either being demoted,
13 disciplined, or terminated, such after-acquired evidence shall bar Plaintiff's claim on liability or
14 damages or shall reduce such claim or damages as provided by law.

15 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND
16 EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

17 That Plaintiff has failed to exhaust his administrative remedies, the exhaustion of
18 which is a condition precedent to the maintenance of those causes of action.

19 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND
20 EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

21 That all employment actions taken by Defendant were made without malice, in good
22 faith and for legitimate, nondiscriminatory business reasons.

23 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND
24 EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

25 That all actions taken by Defendant were required by business necessity and were
26 therefore justified.

27 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH
28 AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

1 That each and every act done by Defendant with regard to, or in any way related to,
2 Plaintiff's employment with Defendant was privileged as a good faith assertion of Defendant's legal
3 and contractual rights.

4 AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND
5 EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

6 That at all times relevant, Defendant promulgated an anti-discrimination policy and
7 complaint procedure which was communicated to Plaintiff, and about which Plaintiff received
8 training, and Defendant otherwise exercised reasonable care to prevent and correct promptly any
9 inappropriate conduct. Plaintiff unreasonably failed to take advantage of the established compliant
10 procedures, failed to take advantage of other preventative or correction opportunities provided by
11 Defendant, and otherwise failed to avoid harm.

12 AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH
13 AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

14 That the Court's jurisdiction over the subject matter of Plaintiff's Complaint is
15 preempted by the exclusive remedy provisions of the California Workers' Compensation Act,
16 California Labor Code section 3200, *et seq.*, because Plaintiff's alleged injuries arose as a result of
17 his alleged employment.

18 AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH
19 AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant LMC alleges:

20 Defendant alleges that Plaintiff is not entitled to recover punitive or exemplary
21 damages or penalties, as prayed for in the First Amended Complaint on the grounds that any award
22 of such damages under California law in general and/or as applied to the facts of this case would
23 violated Defendants' constitutional rights under provisions of the United States and California
24 Constitutions, including, but not limited to, the Equal Protection and Due Process Clauses of the
25 Fifth and Fourteenth Amendments, the Excessive Fines and Cruel and Unusual Punishment Clauses
26 of the Eighth Amendment and Article I, Sections 7 and 17, and Article IV, Section 16 of the
27 California Constitution. Defendants have made good faith efforts to comply with the law and as
28

1 such even if, *arguendo*, Plaintiffs could establish any of the claims alleged in the First Amended
2 Complaint there has been a good faith dispute and no willful violation of law.

3 Defendant has not yet completed a thorough investigation and study or completed
4 discovery of all facts and circumstances of the subject matter of the Complaint and, accordingly,
5 reserves its right to amend, modify, revise or supplement its Answer, and to plead such further
6 defenses and take such further actions as it may deem proper and necessary in its defense upon the
7 completion of said investigation and study.

8 WHEREFORE, Defendant prays judgment against Plaintiff as follows:

9 1. For an order dismissing Plaintiff's claims with prejudice, and entering
10 judgment in favor of Defendant and against Plaintiff;

11 2. For all reasonable costs and attorneys' fees incurred by Defendant in
12 connection with the defense of this matter; and

13 3. For such other and further relief as the Court in the exercise of its discretion
14 deems just and proper.

15 Dated: January 22, 2008

16
17 /s/ Todd K. Boyer
18 TODD K. BOYER
19 LITTLER MENDELSON
20 A Professional Corporation
21 Attorneys for Defendant
22 LOCKHEED CORPORATION
23
24
25
26
27
28

21 Firmwide:84067307.1 051770.1004